

Delaware Sea Level Rise Advisory Committee
DRAFT Meeting Summary
May 23, 2013

Materials Distributed*:

Agenda
Draft Summary of April's Meeting Summary
Draft Final Recommendations
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Guiding Principles

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<http://www.dnrec.delaware.gov/coastal/Pages/DESLRAdvisoryCommittee.aspx>

Key Discussion Points:

Introduction

Sarah Cooksey, Delaware Coastal Programs (DCP), welcomed everyone and thanked them for their continued participation in the Sea Level Rise Advisory Committee (SLRAC). She explained that the purpose of this meeting is to seek approval on all of the recommendations to bring to Secretary O'Mara. This is also the second to last meeting planned for the SLRAC. The final meeting is scheduled for August 15, 2013; the August meeting will provide an opportunity for members to sign the recommendations and the final document.

The draft summary of the April 2013 meeting was approved as final with the recommendations submitted by SLRAC committee members.

Vote on most of the recommendations

Before beginning the voting process, Susan Love, DCP, reviewed the changes made to the recommendations as a result of the April SLRAC meeting. She also highlighted desired amendments submitted by the League of Women Voters.

Pam Bakerain, Delaware Farm Bureau, was given Mark Davis's proxy vote and Sarah Cooksey was given John Taylor's and Quinn Johnson's proxy votes. Sussex County opted to abstain from voting on any of the recommendations.

To expedite the voting process, it was decided to vote on as many non-contentious recommendations as possible. Recommendations that have recommended changes or needed further discussion before voting were excluded from the first vote. These recommendations were #'s 10, 11, 13, 14, 16, 17, 20, 24, 29, 33, 35, 54 and 55. Chad Tolman, League of Women Voters, made a motion to include all recommendations in the final document, but exclude the ones that the SLRAC decided needed more conversation before voting on. Mary Ellen Gray, Kent County, seconded the motion.

The motion to include all of the recommendation on the Draft Final Recommendations handout in final document except for options 10, 11, 12, 14, 16, 17, 20, 24, 29, 33, 35, 54 and 55 passed with a vote of 21 Yes, 2 No, and 1abstention.

Discussion and voting on excluded recommendations

It was decided to go through each of the recommendations that were excluded from the initial vote individually and in numerical order.

Recommendation No. 10

In the Draft Final Options document, this recommendation reads, “Encourage early transportation planning and conceptual infrastructure design for sea level rise adaptation.” The League of Women Voters recommended changing the title of the recommendation to “Strongly encourage regional planning agencies and DelDOT to work together on early transportation planning and conceptual infrastructure design for sea level rise adaptation.” Kurt Reuther, Delaware Department of Safety and Homeland Security, recommended against including the word “strongly”. Michael Kirkpatrick, DelDOT, discussed how DelDOT has already been implementing the ideas put forth in this recommendation and that any word changes are irrelevant. Lew Killmer, League of Local Governments, and Karen Weldin-Stewart, Delaware Insurance Commissioner’s Office, wondered why this recommendation was part of the list and expressed the need for the document to come up with new ideas that do not water down the rest of the recommendations. Brenna Goggin, Delaware Nature Society, wanted to keep the recommendation in the document to highlight the work that DelDOT is already doing. Lew Killmer made the motion to delete recommendation No. 10. Pam Bakerain seconded the recommendation. Bob Scarborough, DCP, was concerned about maintaining consistency in the motions and how they are worded for the up or down vote and recommended that the committee modify their motion to be worded to include recommendation 10 in the final document. Mr. Killmer and Ms. Bakerain agreed to the change in how the motion was phrased.

The motion to include recommendation No. 10 in the final document did not pass with 1 vote for, 22 votes against, and 1 abstention. Recommendation # 10 will be deleted from the final list of recommendations.

Recommendation No. 11

In the Draft Final Options document, this recommendation reads, “Allow for the connection of individual septic systems to community septic systems with excess capacity when human safety and welfare are at risk.” The League of Women Voters had recommended changing the term septic systems to wastewater treatment systems, which Jerry Esposito, Tidewater Utilities, agreed was appropriate. The League also requested that “allow for” be replaced with the word “facilitate”. There was concern by Rich Collins, Positive Growth Alliance, and Pam Bakerain that the wording “allow for” in the recommendation indicated increased regulations. Additional concerns were brought up by Michael Kirkpatrick that the language would need to be changed since this action requires two private parties to make an agreement . Mr. Esposito explained that recommendation came into being because it is inefficient to connect a failing system to something near-by due to permitting or funding issues. He said that this recommendation would allow for a solution for that deficiency in the process. Richie Jones, The Nature Conservancy, made a motion to approve the League of Women Voters changes and to include the recommendation in the final document. Connie Holland, Delaware Office of State Planning and Coordination, seconded the motion.

The motion to include recommendation No. 11 in final document with the League of Women Voters edits passed with 23 votes for, 0 votes against, and 1 abstention. This recommendation will be included in the final recommendations and will be worded to read “Facilitate the connection of individual septic systems to community wastewater treatment systems with excess capacity when human safety and welfare are at risk.”

Recommendation No. 13

In the Draft Final Options document, this recommendation reads, “Consider sea level rise implications in future regulatory updates for septic systems and wells.” Rich Collins was concerned that this recommendation gave the government the veto power to keep people from having a septic system or a well. Kurt Reuther and Jerry Esposito responded by letting Rich know that there is a regulatory review process that addresses Mr. Collin’s concerns. Brenna Goggin made a motion to include recommendation No. 13 as written in the final document. Connie Holland seconded the motion.

The motion to include recommendation No. 13 as written in the final document passed with 21 votes for, 2 votes against, and 1 abstention. It will be included without revision in the final list of recommendations.

Recommendation No. 14

In the Draft Final Options document, this recommendation reads, “Encourage the Governor to sign an executive order that would direct state agencies to plan for sea level rise.” Pam Bakerain said that she would have to vote to not include this recommendation in the final document since she has a problem with using the powers of an executive order when all that is needed is proper communication between agencies. She discussed how the governor is already concerned with sea level rise and will take the recommendations seriously and that Secretary O’Mara can talk to him to have them implemented. Connie Holland disagreed with Ms. Bakerain’s comments and expressed her support for including this recommendation in the final document. Barbara DeHaven, Delaware Economic Development Office, clarified that the executive order will be void after the governor’s term. Kevin Whittaker, Home Builders Association of Delaware, is concerned that a recommendation like this will create increased legislation that will become a burden that residents will have to fight. Rob McCleary, DelDOT, said that keeping this recommendation will provide a directive to all state agencies, programs, managers, and employees on how the state is addressing sea level rise; that it would provide consistency by utilizing the chain of command. Motion made by Pam Bakerain to include the recommendation in the final document (her original motion was to delete the recommendation, but for consistency flipped the wording). Brenna Goggin seconded the motion.

The motion to include recommendation No. 14 as written in the final document passed with 17 votes for, 5 against, 1 abstention, and 1 absent. It will be included in the final recommendations.

Recommendation No. 16

In the Draft Final Options document, this recommendation reads, “Consider sea level rise implications in future updates to the state Coastal Zone Act regulations.” The League of Women Voters recommended that this be reworded to “Incorporate sea level rise implications in future updates to the state Coastal Zone Act regulations.” They also recommended that the text be amended to include the following as the first sentence “At some future time it may be necessary to consider redefining the boundary of the state’s Coastal Zone as described in the Act of 1971, however no change is needed at this time.” Kurt Reuther recommended, for consistency, keeping the term “consider” rather than “incorporate.” Chad Tolman disagreed and recommended maintaining the League of Women Voters edits, explaining that as the CZA shrinks, it may need to be redefined in the future. Michael Kirkpatrick recommended changing the description to better address the SLRAC’s intent, which is that no new industry would be allowed if the CZA were redefined, but that existing industry could adjust to sea level rise. Richie Jones made a motion to reject the League of Women Voters edits to recommendation No. 16. Brenna Goggin seconded the motion. Motion to reject the League of Women Voters edits was passed with 20 votes for the motion, 4 votes against the motion, and one abstention. A second motion was made by Lew Killmer to include the recommendation in the final document as written in the Draft Final Options document. Brenna Goggin seconded the motion.

The motion to include recommendation No. 16 with no amendments passed with 22 votes for, 1 vote against, and 1 abstention. It will be included in the final list without edits.

Recommendation No. 17

In the Draft Final Options document, this recommendation reads, “Create a financial assurance program to minimize the state’s liability to clean up industrial sites if they are abandoned as a result of sea level rise.” Pam Bakerain recommended rolling this recommendation in with recommendation No. 62 as an innovative funding option. Chad Tolman and Michael Kirkpatrick felt that recommendation 17 is a separate issue from the funding options in recommendation 62 and that Delaware needs to understand this problem of abandonment and what are the implications of keeping an abandoned site are. Barbara DeHaven was concerned with singling out properties affected by sea level rise and wondered if there wasn’t a system already in place addressing these abandoned properties. Sarah Cooksey called on Greg DeCowsky, Delaware DNREC Department of Waste and Hazardous Substances, for more information. He discussed how there is a mechanism already in place to fund the cleanup of these properties under the Hazardous Substance Cleanup Act. The number of sites that Delaware cleans up is dependent on available funds. From his perspective, there needs to be an environmental liens act that requires a property to clean up the contamination regardless of if they went bankrupt or not. Rich Collins asked Mr. DeCowsky if this recommendation already exists. Mr. DeCowsky responded that it does, but does not specifically address sites abandoned due to sea level rise. Chad Tolman made a motion to accept recommendation No. 17 as written. Mary Ellen Grey seconded the motion.

The motion to include recommendation No. 17 in final document failed with 4 votes for the motion, 18 votes against the motion, and 2 abstentions. No. 17 will not be included in the final list of recommendations.

Recommendation No. 20

In the Draft Final Options document, this recommendation reads, “ Incorporate sea level rise consideration into municipal comprehensive development plans.” The League of Women Voters submitted comments and edits for this recommendation that would include counties as well as municipalities. There was a discussion among SLRAC members about how to word the description for this recommendation with Sarah Cooksey recommending, “consideration of sea level rise impacts ... that municipalities are considering the impacts of sea level rise” which keeps away from the stronger language other committee members were concerned about and provides a discussion about sea level rise. Richie Jones recommended changing consider to “proactively take into account.” Rich Collins was concerned that this is created by statute and that the municipality should have the final say; that the SLRAC has no power to say what a municipality has to incorporate in a land use plan. Mary Ellen Grey made a motion to adopt the recommendation with changes as included. Brenna Goggin seconded the motion.

The motion to include recommendation No. 20 in the final document passed with 20 votes for the motion, 2 votes against the motion, and 2 abstentions. This recommendation will be included in the final recommendations and its title will read as “Consider incorporation of sea level rise considerations into municipal and county comprehensive development plans.” The text will also be amended to reflect this discussion.

Recommendation No. 24

In the Draft Final Options document, this recommendation reads, “Develop a statewide retreat plan.” Comments and edits were submitted by the League of Women Voters to change the language of the title to include an intent to update periodically since the sea level rise situation may look different in 50 years. Rich Collins provided an example of how Bay Cove may not have been developed if we had voted in 1962 or 1963, but it hasn’t been under water in 50 years. Kurt Reuther responded that the door swings

both ways when updating and that future plans may accommodate less for sea level rise, depending on the situation in 50 years. Kurt Reuther made a motion to accept the language changes. Lew Killmer seconded the motion. Motion to include the language changes passed with 21 votes for, 2 votes against, and 1 abstention. Richie Jones made a second motion to include the recommendation, with the League of Women Voters changes, in the final document. Lew Killmer seconded the motion.

The motion to include recommendation No. 24 in the final document with the League of Women Voters edits passed with 20 votes for, 1 vote against, 2 abstentions, and 1 absent. The recommendation will read "Develop a statewide retreat plan and update it periodically".

Recommendation No. 29

In the Draft Final Options document, this recommendation reads, "Develop a comprehensive wetlands restoration strategy in response to sea level rise." The League of Women Voters recommended changes to the title to gain more flexibility and to restore wetlands when feasible. Brenna Goggin made a motion to accept the League of Women Voters edits and to incorporate the recommendation in the final document. Connie Holland seconded the motion.

Motion to include recommendation No. 29 with the League of Women Voters edits to the title passed with 21 votes for, 2 votes against, and 1 abstention. The recommendation will be included in the final list and will read "Develop a comprehensive wetlands restoration, protection and retreat strategy in response to sea level rise."

Recommendation No. 33

In the Draft Final Options document, this recommendation reads, "Develop a comprehensive outreach strategy to educate public about sea level rise." The League of Women Voters recommended that "public" be changed to "all Delawareans" to reflect that everyone should be informed and reached out to with educational information. Lew Killmer recommended changing the wording to "all stakeholders," though Rob McCleary was concerned that using the term "stakeholders" would limit future people who may be interested and recommended keeping "public." Lew Killmer voted to include the recommendation with the recommended word changes from the League of Women Voters and changing the word "public" to the term "all stakeholders." Bill Lucks seconded the motion.

Motion to include recommendation No. 33 with the changes from the League of Women Voters, but change the word "public" to the term "all stakeholders" passed with 21 votes for, 2 votes against, and 1 abstention.

Recommendation No. 35

In the Draft Final Options document, this recommendation reads, "Improve the ability of homebuyers to investigate a property's potential vulnerability to sea level prior to purchase." The League of Women Voters submitted the following wording change for the title: "Improve the level of information provided to homebuyers regarding a property's potential vulnerability to sea level rise prior to purchase." The League of Women Voters also recommended that the following sentence be added to the description: Prospective buyers should be informed by the state about the existence and nature of the web site, which should be updated from time to time with the latest projections of how the relative sea level at the Delaware Coast is expected to change with time - along with an estimate of the uncertainties - based on the best available science." The intent of the League of Women Voters edits were to create a responsible party to disseminate information to homebuyers about potential impacts from sea level rise. They had concern that the state may develop a website but then not put in the effort to inform buyers about it. The wording in the Draft Final Options document made it the responsibility of the buyer to inform themselves about these risks. Additionally, the League of Women Voters requested that the website be

updated periodically to represent updates in sea level rise information. Karen Weldin clarified that the responsibility of informing potential homebuyers about sea level rise should be done by the banks and loan officers, not by the Insurance Commissioner's Office and that putting the burden on real estate agents escalates coverage.

Kurt Reuther made a motion to include recommendation No. 35 in the final document as written in the Draft Final Options Document, without the League of Women Voters edits. Bill Lucks seconded the motion.

Bill Lucks discussed how there are concerns about liability to real estate agents who may not be fully aware or understand sea level rise issues and that he felt that sections of the current disclosure form concerning floodplains and flooding adequately address issues that result from sea level rise. Mr. Lucks felt that the language of the recommendation, without the edits, is more than adequate and that sea level rise information and maps are not an exact science. Sarah Cooksey expressed her concern about how Secretary O'Mara was surprised the recommendation was not stronger and had concerns about voting in favor of the recommendation without the League of Women Voters edits.

The motion to include recommendation No. 35 in the final document as written without the League of Women Voters edits failed with 15 votes for, 5 votes against, and 4 abstentions.

Mary Ellen Grey made a second motion to include recommendation No. 35 in the final document with the League of Women Voters edits. Chad Tolman seconded the motion.

Michael Kirkpatrick discussed that the information provided on the state's website about sea level rise would be the state's official information on the issue and that there should be no liability to an agent if they just printed up the maps and provided them to potential buyers. This recommendation would only be requiring that information about sea level rise would be disclosed. Kevin Whittaker was concerned that when the general public uses the website it may scare people based only on predictions that may not occur and that he knows of protections that are in place that are not reflected in the online inundation maps.

Motion to include recommendation No. 35 with the League of Women Voters edits was defeated with 5 votes for, 16 votes against, and 3 abstentions.

Richie Jones made a third motion to include recommendation No. 35 as written without the League of Women Voters edits. Mary Ellen Grey seconded the motion.

The motion to include recommendation No. 35 without the League of Women Voters edits passed with 20 votes for, 3 votes against, and 1 abstention. The recommendation will be included in the final document as written in the Draft Options document.

Recommendation No. 's 54 and 55

These recommendations read, "Add additional tidal observation stations in Delaware" and, "Install inland inundation water level monitoring sites," respectively. Chris Sommerfield, University of Delaware, felt that modeling for salinity levels should also be included in these recommendations to fill known data gaps and that the two could be combined. He proposed deleting No. 55 and changing No. 54 to read as follows: **"Install additional water level and salinity observational stations in Delaware tidal waters.** Variations in salinity and tidal levels in the Delaware Bay and Delaware inland waters can be highly localized. The number and location of existing water level and salinity observation stations in Delaware are inadequate to understand place-specific conditions. Such stations can help with understanding of

extent and frequency of storm flooding in the short term while providing data and information useful for planning adaptation responses. A report entitled, “*A Data GAP Analysis and Inland Inundation Survey for the Delaware Coastline* (Leathers et al, 2010),” recommended additional stations in the vicinity of Slaughter Beach, Longneck, New Castle, Woodland Beach and Port Mahon.”

Brenna Goggin made the motion to delete No. 55, accept the proposed edits to No. 54 and incorporate the amended No. 54 into the final document. Bill Lucks seconded the motion.

The motion to passed with 23 votes for, 0 votes against, and 1 abstention. The final recommendation will reflect the amended text above.

Public Comments

Alan Muller, Green Delaware, had comments on recommendation No. 16 about the Coastal Zone Act (CZA). He was concerned that the program is already weakly implemented and that the wording in the recommendation emphasized the importance of heavy industry to Delaware’s economy, with an air of propaganda, without any language to discuss how people’s homes are important, too. He questioned what the boundary is between adaption and retreat and how that this could be used as a further excuse to drill more holes within the CZA. Mr. Muller did not argue that there may need to be changes made to the CZA, but that it is a valuable tool. In regards to homeowner disclosure, he felt it was inherently obvious to not encourage people to purchase property that will be under water in their lifetime and that the disclosure should be proactive and that the wording within the recommendation be more strongly worded.

Carol Overland, an attorney from Minnesota, was concerned about the lack of discussion about utility infrastructure in any of the recommendations and that there should be an investigation of the impacts to electricity, nuclear energy, and gas. Residents need to be aware of where these utilities are coming from and where they will get their essential infrastructure. In regards to recommendation No. 35, homeowner disclosure, it is unfair to take the burden of disclosure off of the seller and make the buyer responsible for understanding sea level rise impacts. Ms. Overland was disappointed that there was resistance for disclosing sea level rise and that going to the bank is too late to find out these issues. Additionally, she was concerned about recommendation No. 17 which does not disclose the state’s liability, which is a state fund, and that the intent is to minimize state liability.

Peggy Schultz, League of Women Voters, expressed disappointment that the SLRAC didn’t pass the League of Women Voters edits to recommendation No. 35. Ms. Shultz made the example that a person can buy a house today at Primehook and not fully understand all of the impacts associated with sea level rise that may affect the property and how much it will cost to make all the repairs to both a property and to infrastructure such as roads. These costs are paid for by the DE tax payers and there is an issue of honesty not disclosing the sea level rise scenario that would be critical in making these decisions.

Kurt Bertino, Kitts Hummock resident, appreciated the SLRAC coming together to make good decisions and recommendations and that many of the concerns still have the opportunity to come up in the future. He is also interested in seeing the process of adaption beginning and seeing the work being done.

Jim Bailey, Delaware resident, thanked the SLRAC for their time and stated his full support for the final decision on how to go forward with recommendation No. 35. He was concerned about the personal liability associated with a potential homebuyer thinking that a 12 foot wave may come through an area which may scare that potential buyer away. Mr. Bailey felt there is a need for concrete data to develop

solid information to establish more facts about sea level rise and he is curious to see how adaptation measures will proceed from here.

Adjournment

The next Sea Level Rise Advisory Committee meeting is scheduled for August 15, 2013.

Attendees:

Jim Bailey, Milton
Kurt Bertino, Kitts Hummock
Mike Bowser, New Castle County
Richard Collins, Positive Growth Alliance
Sarah Cooksey, DE Coastal Programs
Greg DeCowsky, DNREC DWHS
Barbara DeHaven, DEDO
Jennifer DeMooy, DNREC Energy and Climate
Molly Ellwood, DE Coastal Programs
Jerry Esposito, Tidewater Utilities, Inc
Brenna Goggin, DE Nature Society
Mary Ellen Grey, Kent County
Marcus Henry, New Castle County
Connie Holland, DE Office of State Planning
Coordination
Richie Jones, The Nature Conservancy
Ruth Ann Jones, OMB
George Junkin, South Bethany
Lew Killmer, DE League of Local Governments
Jim Kirkbride, DE Resident
Michael Kirkpatrick, DelDOT
Don Knox, DEMA
Nancy Lawson, DE Resident

Susan Love, DE Coastal Programs
Bill Lucks, Delaware Realtor's Assoc.
Rob McCleary, DelDOT
Jeff Montgomery, Delaware News Journal
Alan Muller, Green Delaware
Carol Overland, Port Penn
John Paradee, Prickett, Jones & Elliot
Richard Perkins, DE Division of Public Health
Kurt Reuther, DE Dept of Safety and Homeland
Security
Ralph Satterfield, Little Creek
Bob Scarborough, DE Coastal Programs
Peggy Schultz, DE League of Women Voters
Caroline Schwartz, South Bowers Beach
Jeff Shockley, Sussex County
Chris Sommerfield, Univ. Of Delaware
Pam Bakerain, Delaware Farm Bureau
Chad Tolman, DE League of Women Voters
Kelly Valencik, DE Coastal Programs
Karen Weldin, DE Insurance Commissioner's
Office
Kevin Whittaker, Home Builders Assoc. of DE
Bart Wilson, Center for Inland Bays